

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SCOTT EARL, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BELL HOUSE, LLC; FRANK BAILEY;  
and BRENDA BAILEY,

Defendants.

**8:20CV129**

**ORDER REGARDING  
CIVIL NON-JURY TRIAL  
DEADLINES AND  
PRACTICES**

This case is before the Court in anticipation of the non-jury trial scheduled to begin on Tuesday, July 12, 2022. The following deadlines and practices will apply to this trial.

**I. PRETRIAL DEADLINES**

**A. Pretrial Motions**

**Motions to continue trial** are referred to the magistrate judge assigned to the case for decision. Any motion to continue trial shall be filed with the Clerk of the Court, together with a supporting affidavit, as soon as is practicable. The moving party shall send a proposed order to the presiding Magistrate Judge.

**Motions in limine and motions seeking pretrial evidentiary hearings** shall be filed no later than fourteen (14) days before trial. This deadline supersedes the deadline set out in the Trial Setting Order filed February 23, 2022. Filing 50. Opposition briefs must be filed no later than seven (7) days after the motion is filed. Reply briefs will not be allowed. Please notify the undersigned's chambers immediately of any pretrial motion requiring an evidentiary hearing.

**B. Exhibit and Exhibit Lists**

Except as modified by this order, NECivR [39.3](#) applies to Exhibits and Exhibit Lists.

**Exhibits:** Two copies of trial exhibits shall be delivered to the Court in binders and electronically no later than fourteen (14) days before the trial.

**Exhibit Lists:** No later than fourteen (14) days before trial, each party shall email an exhibit list in Word version to chambers. If the exhibit list was not incorporated into the final pretrial order, the exhibit list must also be filed with the Clerk of Court no later than fourteen (14) days before trial.

**C. Use of Depositions**

No later than fourteen (14) days before trial, the parties shall meet and confer to (1) designate and counter-designate testimony from any depositions which will be offered at trial, and (2) seek to resolve any outstanding objections made at the deposition to testimony either party seeks to offer at trial as required by NECivR [30.1](#)(e). The party seeking to use any part of a deposition (including any part counter-designated in response to designations by a party) shall submit any unresolved objections to the Court, along with the testimony designated by either party to be used at trial, in a motion in limine no later than seven (7) days before trial as required by NECiv.R 30.1(f). *See* NECivR [30.1](#) and 32.1.

**D. Witnesses and Witness Lists**

**Witness Lists:** No later than seven (7) days before trial, each party shall email a witness list in Word version to chambers. If the witness list was not incorporated into the final pretrial order, the witness list must also be filed with the Clerk of Court no later than seven (7) days before trial. *See* NECivR [16.2](#)(a)(2)(D).

Each party's witness list shall include the full name and address for each such witness. Witnesses who do not appear to testify when scheduled will be considered withdrawn.

**Expert Witnesses:** No later than seven (7) days before trial, the proponent of an expert witness must deliver to chambers a paper copy of Fed. R. Civ. P. 26(a)(2) disclosures for each expert witness identified in the Pretrial Order. Any expert whose Rule 26 disclosure is not received by the Court within seven (7) days before trial, or earlier if requested by the Court, will be considered withdrawn.

#### **E. Video Depositions**

No later than seven (7) days before trial, the party seeking to use a video deposition shall email a Word copy of the transcript to chambers at [Buescher@ned.uscourts.gov](mailto:Buescher@ned.uscourts.gov). The party seeking to use a video deposition shall also submit a list or index of unresolved objections to the court in a motion in limine filed with the Clerk of the Court no later than seven (7) days before trial as required by NECivR 30.1(f). The list or index of objections must identify the location of the objection by page and line as well as the precise nature of the objection. After the court rules on the unresolved objections, the party seeking to use the video deposition must then edit the video as required by NECivR 32.1.

#### **F. Interrogatories and Requests for Admissions**

No later than seven (7) days before trial, a party seeking to use interrogatories or requests for admission shall email a Word copy of the interrogatories or requests for admission to chambers at [Buescher@ned.uscourts.gov](mailto:Buescher@ned.uscourts.gov). The party seeking to use the interrogatories or requests for admission shall also submit a list or index of unresolved objections to the court in a motion filed with the Clerk of the Court no later than seven (7) days before trial. The list or index of objections must identify the location of the objection by page and line as well as the precise nature of the

objection. These requirements apply to answers to interrogatories and requests for admission including matters deemed admitted because unanswered. *See* Fed. R. Civ. P. 36(a).

#### **G. Trial Briefs**

Trial Briefs must be filed no later than seven (7) days before trial and comply with NECivR [39.2](#).

#### **H. Interpreters**

A party requiring an interpreter shall notify the courtroom deputy by email at [tracy\\_mckibben@ned.uscourts.gov](mailto:tracy_mckibben@ned.uscourts.gov) or by phone at (402) 661-7351 no later than seven (7) days before trial.

### **II. TRIAL PRACTICES**

#### **A. Trial Schedule**

**Pretrial Conference:** The pretrial conference scheduled with the Magistrate Judge shall remain scheduled subject to the order of the Magistrate Judge. The Court will hold an additional and final pretrial conference in Courtroom #5 at 8:30 a.m. on the first day of trial.

**Trial Hours:** Trial hours will usually be from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m. with fifteen (15) minute breaks during the morning and afternoon.

#### **B. Courtroom Practices**

**Placement of Counsel at Counsel Tables:** Plaintiff's counsel shall utilize the tables closest to the jury box and the defendant's counsel shall utilize the tables farthest from the jury box.

**Questioning:** Counsel should generally question from the desktop podium unless the Court otherwise directs. Counsel should always refer to and address witnesses and parties by their surnames absent prior permission from the Court.

**Table Microphone:** Microphones are placed on each podium, and table microphones are placed on each counsel table. The microphones should be pulled directly in front of and approximately six inches away from counsel. Use these microphones for questioning and making objections. Note that the microphones can be muted for client conferences by pushing the button on the base of the microphone.

**Courtroom Audio:** Be aware that when you speak in the courtroom during trial *and during breaks* it is broadcast to Judge Buescher's chambers.

### **C. Opening Statements and Closings Arguments**

**Opening Statements:** Generally, each party is allotted up to thirty (30) minutes for opening statements. The Courtroom Deputy will monitor time and will provide notice of the expiration of such time and, if requested, will provide notice when five (5) minutes remain.

**Closing Arguments:** Generally, counsel will receive thirty (30) minutes a party for closing argument. Plaintiff may reserve up to fifteen (15) minutes for rebuttal, but it must be true rebuttal and should not raise new issues or points of argument not addressed in plaintiff's first argument. The Courtroom Deputy will monitor time and will provide notice of the expiration of such time, and if requested, can provide notice when five (5) minutes remain.

### **D. Evidence and Objections**

**Evidence Presentation:** Unless good cause exists, counsel shall use the courtroom multimedia systems, including the video presenter and their own laptops, for displaying exhibits on the courtroom monitors. Counsel should become familiar with the equipment prior to trial by contacting the Courtroom Deputy for training.

**No Recross Examination:** The Court will not normally permit recross examination. Cross examination should be limited to the scope of the direct examination, and redirect examination limited to the scope of the cross examination.

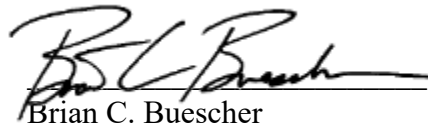
**E. Settlement**

If the parties reach a settlement, it is the responsibility of counsel for all parties to immediately notify the courtroom deputy by email at [tracy\\_mckibben@ned.uscourts.gov](mailto:tracy_mckibben@ned.uscourts.gov) or by phone at (402) 661-7351. If the Court is not open for business, counsel shall immediately inform the courtroom deputy by phone at (402) 669-7410.

IT IS SO ORDERED.

Dated this 8<sup>th</sup> day of June, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B.C. Buescher", written over a horizontal line.

Brian C. Buescher  
United States District Judge